

## 46 Am. Jur. 2d Judges § 193

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### Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

### IX. Disqualification to Act in Particular Case

#### C. Remedies and Procedure

#### 4. Hearing, Determination, and Appeal

## § 193. Determination as to disqualification of appellate judges

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(1), 51(4)

An appellate judge must personally determine both the legal sufficiency of a disqualification motion and the propriety of withdrawing in any particular circumstance.<sup>1</sup> Each appellate judge must individually decide whether recusal is required.<sup>2</sup>

The focus of the statute requiring a judge to self-disqualify when the judge determines that, for any reason, that the judge cannot, or it appears the judge cannot, act in an impartial manner, when applied to an appellate judge, is that the judge should determine whether some circumstance causes the judge to conclude that the judge cannot, or that it appears to the judge that the judge cannot, act in an impartial manner in an appeal.<sup>3</sup>

An appellate judge has a duty to minimize the burdens imposed on the judicial system by disqualification, but any discretion allowed judges to decide their own disqualification must be tempered by the unavoidable conflict of interest presented when a judge considers this issue.<sup>4</sup>

### Observation:

A state supreme court will not overturn a judicial disqualification decision absent an abuse of discretion.<sup>5</sup> Thus, the chief superior judge did not abuse his discretion in denying a prisoner's motion to disqualify the presiding trial judge in a postconviction relief proceeding, where the prisoner had proffered no evidence to support the claim of bias or prejudice on the part of the trial judge,

rather, the prisoner had simply questioned the trial judge's integrity based on statements and acts the trial judge had allegedly promised to commit.<sup>6</sup>

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#### Footnotes

- 1 Adams v. Smith, 884 So. 2d 287 (Fla. 2d DCA 2004).
- 2 Lorenz v. New Hampshire Administrative Office of Courts, 151 N.H. 440, 858 A.2d 546 (2004).
- 3 State v. Henley, 2010 WI 12, 322 Wis. 2d 1, 778 N.W.2d 853 (2009).
- 4 Powell v. Anderson, 660 N.W.2d 107 (Minn. 2003).
- 5 Chandler v. State, 2016 VT 62, 148 A.3d 574 (Vt. 2016).
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